

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JUAN M. ALCARÁZ,

Petitioner,

vs.

BRIAN WILLIAMS,

Respondent.

2:13-cv-00818-JCM-PAL

ORDER

Juan Alcaráz, a *pro se* prisoner, submitted a petition for a writ of habeas corpus and filed an application for leave to proceed *in forma pauperis* (ECF No. 1).

The court denied his application and ordered petitioner to pay the \$5 filing fee by June 30, 2013. ECF No. 3. That time has expired and no payment has been received and no request for additional time has been made. The petition is subject to dismissal for failure to pay the filing fee.

In anticipation of dismissing the petition for lack of payment, the court has reviewed the petition. The review demonstrates that petitioner was convicted on June 10, 2008, 90 days after his direct appeal was decided. Petitioner filed his state post-conviction petition on January 13, 2009, expending 217 of his 365 days allowed under 28 U.S.C. § 2244(d) for filing his federal habeas corpus petition. The appeal of the denial of that petition was decided on February 2, 2009. *See* Petition, p. 1, item 4. The federal petition was handed to prison officials for mailing on May 1, 2013. This means that petitioner has expired a total of 1766 untolled days between the time his conviction became final and the time he submitted his federal petition for mailing to this court. The petition is subject to dismissal on this basis as well.

1 Thus, it appears that a dismissal of this action for failure to pay the fee would not have any
2 impact on any timeliness analysis that might be required should petitioner refile. *See* 28 U.S.C. §
3 2244(d).

4 **IT IS THEREFORE ORDERED** that the action shall be dismissed without prejudice for failure
5 to pay the required filing fee. No certificate of appealability will be issued.

6 The clerk shall enter judgment accordingly.

7 Dated this 15th day of July, 2013.

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11 UNITED STATES DISTRICT JUDGE
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